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TAGS: [PGOV](#) [PREL](#) [ECON](#) [BL](#)
SUBJECT: IMPEACHMENT OF CONSTITUTIONAL JUDGES: THE PROCESS
EXPLAINED

REF: A. LA PAZ 1386
[1](#)B. LA PAZ 1467

Classified By: Charge d'affaires Krishna Urs
for reasons 1.4 (b) and (d).

Summary

[1](#)1. (C) The GOB's impeachment case against four of five of the constitutional tribunal justices (REFTEL A) will be a protracted process. Nonetheless the Movement Towards Socialism (MAS) is trying expedite the case. On June 12, two MAS lower house deputies, who are members of a preliminary investigatory committee, found sufficient evidence for the impeachment charges to be sent to the lower house's Constitution, Justice and Police Commission. On June 13, the Constitution Commission rejected the investigatory committee's findings citing irregularities and asked the committee to correct its report. Though several steps remain before the full lower house will review the case, the MAS-controlled lower house is expected to approve the charges, which by law means the justices will be suspended until the senate reaches a final sentence. The impeachment of the constitutional tribunal justices is part of the MAS' larger strategy of discrediting and undermining the judiciary, a branch of government it currently does not control (REFTEL B). End Summary.

Case Background

[1](#)2. (U) On May 15, President Morales presented to Congress impeachment charges of judicial malpractice against four of five constitutional tribunal justices. The charges stem from the constitutional tribunal's ruling against President Morales' December 2006 interim appointment of four Supreme Court judges. The GOB argues the constitutional tribunal's interpretation of Bolivian law is purposefully incorrect. (Note: The constitutional tribunal is Bolivia's highest court on constitutional matters; the supreme court is the highest court of appeals for all other matters. End Note). Paragraphs 3 to 6 explain the impeachment process according

to Bolivian law 2623, enacted in 2003, which is the law that covers this case.

Preliminary Investigation by Lower House

¶3. (U) Under law 2623, the impeachment claim must first go to the president of the lower house who forwards it to the house's Constitution, Justice and Police Commission (CJPC). The CJPC has three days to notify the Prosecutor and Police Committee (PPC). The PPC then has fifteen days to perform a preliminary investigation and present its findings to the CJPC's president. (Note: This is the step that was completed on June 12. End Note). The CJPC's president has three days to call the full CJPC, which then has ten days to deliberate. If it finds insufficient evidence the case is dropped.

Formal Investigation by Lower House

¶4. (U) If the CJPC finds sufficient evidence, then it can vote by simple majority to approve a formal investigation. The PPC then reconvenes for 90 days, with the possibility of 30 additional days, to conduct a formal investigation and present its "Conclusion Report" to the CJPC president. The CJPC president has three days in which to call the full commission. The full CJPC has 10 days to reach a decision to approve or reject the charges.

Decision by Lower House

¶5. (U) Assuming the CJPC finds sufficient evidence of guilt, the charges are sent to the president of the lower house who has three days to put the charges on the chamber's agenda. The full chamber has ten days to reach a decision on the accusation. A decision requires a majority (50% plus one) of the members present to vote to approve or reject the charges. If there is not a majority after the ten days the case is dropped. Once the accusation is approved the judges will be suspended. Alternate (suplente) judges under article 23 of Law 2623 may serve as their replacements; but the constitutional tribunal currently has no alternate judges.

Senate: The Sentencing Tribunal

¶6. (U) The senate serves as the sentencing body. The president of the lower house has five days to send the charges to the senate. Including weekends and holidays the senate should receive the charges against the constitutional tribunal judges by early to mid December. The senate then must go into a "permanent session" to decide the fate of the accused and cannot address any other issues while in this permanent session. Two-thirds of the senate must vote to convict the judges. If two-thirds of the senate cannot agree to convict, the judges will be absolved. However, Law 2623 does not specify a fixed period of time for deliberation. While the opposition has a one-seat majority in the senate, the MAS will likely use stalling tactics to prevent a final vote. The judges remain suspended until the senate reaches a decision.

Comment: Scenarios/Issues

¶7. (C) The impeachment of the constitutional tribunal justices is part of the MAS' larger strategy of discrediting and undermine the judiciary, a branch of government the MAS currently does not control (REFTEL B). (Note: The opposition controls the senate by one seat, but the MAS' strong majority (and control) over the lower house gives the MAS significant

sway over the legislative branch. End Note). This case is the first test for Law 2623. Since it is constitutional tribunal justices who face impeachment, Congress will likely have to resolve questions regarding the law's interpretation.

As soon as the judges are suspended the constitutional tribunal will in effect be paralyzed as only one judge will still remain on the bench. The opposition is attempting to negotiate with the MAS to have new (alternate) judges named to the constitutional tribunal prior to the completion of the lower house's impeachment deliberations. However, the MAS can and potentially will stall all constitutional tribunal appointments in Congress to allow President Morales (under Constitutional Article 96, attribution 16) to appoint alternate constitutional tribunal judges during the senate's December recess. While a recess appointment may face constitutional challenges, if Morales succeeds in stacking the court, the challenges will fall on deaf ears. End Comment.

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